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THE CAUSES OF TRUSTS AND SOME REMEDIES FOR THEM.

FRANCIS WALKER.

While trusts, or to use a more satisfactory terminology, industrial combinations and monopolies, are comparatively recent phenomena in our economic life, their vital importance to society and the individual has resulted in attracting to them an unusual degree of attention. The subject itself is a complex one, and, the more intensively it is studied, the more difficult it seems to bring all the phenomena into a brief formula, or to prescribe a general policy by laying down a simple rule. It would be impossible to explain in a short paper all of the real causes of trusts, many of which have never been thoroughly studied, and it would be unprofitable to discuss all of the proposed remedies. This paper aims simply at suggesting for discussion certain of the chief causes and certain remedies which appear to be of special interest to the economist at the present time. As far as possible the legal aspect of the question will be omitted from consideration, while the economic phases will necessarily be treated in the broadest manner, and, therefore, without exclusive reference to our peculiar legal conditions.

Industrial combinations may be described as associations of originally independent makers of, or dealers in, a given class of commodities, established with a view to regulating the production or sale of them in a manner more profitable to themselves than that which would be determined by free competition. Industrial monopolies may be

described as particular concerns or combinations of concerns which have acquired a more or less complete possession of the markets in their respective fields of production or trade. The "trust" falls in both of these classes, but does not include all the types of either of them.

The causes of combinations and monopolies are various, and may be classed according to several different principles. In the case of a given combination or monopoly it would probably be found on investigation that it owed its formation to several causes. While the arbitrary determination of the trust promoters or founders is often regarded as the cause, there are generally certain conditions existing which virtually control their determinations.

The following headings should be regarded rather as an arrangement of topics for convenience than a scientific classification. Monopolies may be classed according to their chief causes as follows:

1. Those depending on legal grants, such as patents and franchises.
2. Those depending on the sole possession of natural resources.
3. Those depending on rebates or similar special advantages.
4. Those depending on unfair competition, such as local price cutting, or preventing competitors from getting supplies and facilities.
5. Those depending on efficiency superior to all competition.
6. Those depending on agreements among competitors.

It is evident that as monopolies may result from combinations, a whole train of other causes of monopolies appear, namely, those that lead to combinations. Before

coming to the causes of combinations, however, it may be noted that a number of circumstances which afford a basis for monopoly are likewise inducements to combinations. In order to avoid repetition and confusing in a greater degree a subject necessarily complicated, the effects of these conditions favoring combination need not be considered any further. Classifying combinations according to their causes, we may distinguish the following chief kinds:

1. Those induced by bad systems of corporation law, which allow undue liberty in the consolidation of corporations, and under which there is opportunity given to promoters to make improper gains, by the issue of watered stocks, and by other financial devices.

2. Those designed to take advantage of a protective customs duty.

3. Those designed to counterbalance labor unions, and to give to the employers greater power in bargaining with labor.

4. Those designed to counterbalance a combination in another branch of industry.

5. Those induced by the destructive effects of excessive competition.

6. Those induced by the opportunity to get control of the market, and to enhance prices.

It will be observed that monopolies and combinations, though two distinct things, are not mutually exclusive. Some monopolies are consolidations or combinations of a less permanent or less integrated form. On the other hand, almost any combination may become a monopoly under certain conditions. Most of the so-called trusts, which have a monopolistic power, have passed through the stages of loose combination to a more or less consolidated form or organization.

The combinations which are formed in consequence of the effects of excessive competition may be often practically necessary, if the producers, as a class, are to avoid losing money, and in this sense the elimination of competition may be described as natural. The term natural monopoly is familiar and refers generally to such enterprises as steam railroads, or more especially to municipal enterprises, such as street railways, gas works, and water works. But these are only a few of the enterprises which become noncompetitive from a natural cause, in the sense the term natural is used above. When the matter is thoroughly analyzed, it results in the conclusion that, under certain conditions, competition, when effective and unremitting, becomes destructive of even the stronger competitors, and thus tends, either to eliminate all competitors except the one final victor, or to reduce a comparatively small number of survivors to bankruptcy. It may be fairly said that under such circumstances the conditions of natural monopoly exist.

In the popular mind, the principal cause of combinations and trusts, probably, is the mere chance presented to secure control of the market of a particular commodity, either for a brief period, or in a more permanent way. That is, no particular factor or circumstance was decisive, unless, perhaps, the personal element in the promoters of the combination. It is particularly with this type in mind that our anti-trust laws have been enacted. In this group, which may be called the *omnibus* group, all the combinations, not due to specific causes already mentioned, may be included. Combinations organized simply with a view to control prices, and without any other hold on the trade, have generally been characterized by an extravagant price policy. The reason for this is that a mere agreement among producers is not likely to last long,

and a consolidation of them in any case would be likely to develop new competition, so that under such circumstances the natural impulse is to make hay while the sun shines.

Let us return now to the question of natural monopolies. It has frequently been observed that one of the most fertile fields for the growth of combinations and monopolies is where there exists a limited supply of some highly useful gift of nature, such as coal, ore, petroleum, timber, water power, etc.

While it cannot be proved statistically, there is good ground for believing that in several branches of mining, the products, under a competitive system of production and sale, often do not, on the whole, repay the producers for their outlay. The people who generally make money from such products are those on whose lands the deposits are found, and who lease them on royalty. Production is encouraged in some branches of mining by the speculative profits, and maintained in others, even though the business as a whole is a losing one, by the fact that capital is heavily and irretrievably committed. The conclusion as to the unprofitableness of mining seems to be justified particularly by a study of the history of coal mining and iron-ore mining, where the industry is conducted under conditions of free competition. As such conditions, in a certain sense, afford a justification for combinations, it is important to examine them in some detail. Combination in self-defense can hardly be regarded as an assault on the public welfare requiring penal correction.

A good illustration is found in coal mining. At the beginning of the exploitation of a coal field, it naturally happened that the producers attacked, at first, comparatively accessible deposits, and consequently were obliged

to apply but little capital, or otherwise commit themselves seriously to the continuation of the business. Under such circumstances, they prospered or failed, continued or abandoned their activities, according to the profits obtained. As the business developed, however, the coal lands acquired more value, due to the development of the market (or demand), and those who engaged in coal mining, or those who had coal lands, found themselves in the position of holding something of value, which, however, could yield a return only if brought under exploitation. On the other hand, the development of the industry led to the sinking of more capital into mining improvements, such as shafts instead of slopes, more elaborate mechanical equipment, etc., either because the coal had to be sought at deeper levels, or because such an equipment, when properly utilized, resulted in a reduction in the cost per ton of coal mined. In fact, it was found that operating costs depended in a large degree on output, or how much coal could be taken from a single shaft. This condition drove every operator to try to increase his output in order to lower his costs.

The inevitable result was overproduction. The market became glutted with coal, which so declined in price that it afforded a profit to only a few of the best located producers. Many of those who were losing money stuck to it because their capital was committed; others failed outright and quitted the business. It was quite possible, however, for production to be continued in mines in which the cost of production exceeded the market price, particularly if the operating company became bankrupt, and sold its improvements far below cost. The natural growth of demand was the beacon of hope to the mining operator, but, when the demand did outstrip production, either from the natural growth of population

and use, or from unusual industrial activity, this opportunity was seized on by those who possessed coal lands hitherto unexploited, or previously exploited but abandoned, to enter the business, so that production and competition in a short time became excessive again, and, with that, a new period of glutted markets and unprofitable business occurred. In such periods of bad times, there was no chance to accommodate production to demand, through a general reduction in output, because, as long as the coal operator was working on a strictly competitive basis, he could not reduce his output without increasing his cost per ton. The extra amount of coal produced by him had much less effect in depressing the market price than in diminishing his own costs. As long as he could not rely on others reducing their output, the most advantageous thing for him to do was to increase his own output. Under such circumstances, competition became destructive, cut-throat competition, from which the only results could be heavy losses for many, until the excessive productive capacity was put out of operation, or a new growth in demand caught up with the output.

Concerns which were handicapped by extensive investments in coal lands, which could not all be brought into operation at once, because there was no market for the coal, being thus burdened with heavy carrying charges, were naturally the ones that suffered most in these recurring periods of overproduction and glut. As long as lands adjoining theirs, equally available for mining, were not exploited, the owners felt themselves deprived of an opportunity to earn something from them, and often, indeed, where they had purchased them with a view to mining, were paying carrying charges on them in hard cash. This tended to force such properties, directly or indirectly, into the ranks of producers. As

such new competition would not be welcome, those already in the field, who contemplated continuing so indefinitely, would often buy or lease such lands, establishing gradually large reserves. As long, however, as free competition persisted, and there was a division in the ownership of the coal lands, the price of coal could not rise, in a permanent way, very much above the cost of mining, and would often fall below it. There was no margin, therefore, to cover the carrying charges of extensive reserves of coal lands.

These two factors, then, the condition of diminishing cost with enlarged output, and the pressure of the owners of unexploited properties on those that are engaged in operating mines, both tend irresistably to overproduction and losses. Such being the condition of the industry, the obvious remedy of combination has generally been clutched at by the producers, and it is a significant thing that the agreements among them are from the beginning directed quite as much toward the restriction of output as the fixing of prices. The restriction of output is, in fact, the crux of the whole problem. The ingenious way in which this was accomplished in the anthracite coal fields of Pennsylvania, by a combination of railroads interested in coal mines to limit the railroad shipments from each mine, is a matter of common knowledge, and it has been imitated in other parts of the country.

Once, however, combination is achieved, the tendency of the producers, if left to their own devices, is to go to the other extreme, both in restricting production and raising prices. There is not much doubt that, if all the reserves in our great coal fields and ore fields were opened up for operation to anyone who would pay a royalty equal to the intrinsic advantage (economic rent) of the mineral rights in question, the prices of coal and ore in our most favored

producing districts would experience a very marked decline, and with them the values of the deposits. In other words, the very high prices which are demanded in some districts for coal and ore, and for coal and ore lands, are dependent, in a large measure, on the establishment of very large reserves, as well as the concentration of current production in a comparatively few hands, among which understandings, concerning the restriction of output, are easily and quietly effected.

The manufacturing industry does not involve the use of natural resources and so does not contain both of these competition-destroying tendencies. Possibly there are exceptions to the statement, particularly where water-power rights exist—but these only tend to emphasize the importance of the difference. On the other hand, for those in the manufacturing business who have already committed themselves more or less permanently to a particular branch of it by the investment of capital in works, etc., the conditions are to a considerable extent similar to those surrounding persons engaged in the mining business, in so far, that is, as that branch of manufacture is a business of diminishing costs.

Generally speaking, manufactures under the factory system involve diminishing costs, while those under the household system often have nearly constant costs. Diminishing costs is the very *raison d'être* of the factory in many branches of industry. Wherever there are considerable general expenses independent of output, the "burden expense" that must be added to the prime cost of labor and materials will always tend to give diminishing costs with increased output. It is a pretty safe assumption that when bonuses are offered to workmen for extra large output the object is to take advantage of this diminishing cost. One does not need to suspect Car-

negie, for example, of sporting proclivities in reading of the "records" formerly made at Homestead, or at the Edgar Thompson mills. It is interesting to note that to this fact, in connection with excessive competition, Carnegie himself attributed the development or combinations in manufactures. In an article in the North American Review in 1889, he wrote as follows: "It is worth while to inquire into the appearance and growth of Trusts and learn what environs produce them. Their genesis is as follows: A demand exists for a certain article, beyond the capacity of existing works to supply it. Prices are high, and profits tempting. * * * * * New partnerships are formed, and new works are erected, and before long the demand for the article is fully satisfied and prices do not advance. In a short time the supply becomes greater than the demand, there are a few tons or yards more in the market for sale than required, and prices begin to fall. They continue falling until the article is sold at cost to the less favorably situated or less ably managed factory; and even until the best managed and best equipped factory is not able to produce the article at the prices at which it can be sold. * * * * * As manufacturing is carried on today, in enormous establishments with five or ten millions of dollars of capital invested, and with thousands of workers, it costs the manufacturer much less to run at a loss per ton or per yard than to check his production. Stoppage would be serious indeed. The condition of cheap manufacture is running full. Twenty sources of expense are *fixed charges*, many of which stoppage would only increase. Therefore the article is produced for months, and in some cases that I have known for years, not only without profit or without interest upon capital, but to the impairment of the capital invested. * * * * * It is

in the soil thus prepared that anything promising relief is gladly welcomed. * * * * * Combinations—syndicates—trusts—they are willing to try anything. * * * * * Such is the genesis of 'Trusts' in manufactured articles."

It would take, indeed, a wide knowledge of the technique of many branches of manufacture to enable one to express an opinion as to the extent to which diminishing costs prevail in the manufacturing industry, and a very exact knowledge of a particular branch to tell in what degree it prevailed therein. Probably there is no such thing, generally speaking, as a final best unit of manufacturing plant; it all depends on the volume of business and the improvements in technique.

The great significance of diminishing costs in transportation is admitted on all sides, and by some who deny its existence in manufactures.

There is a branch of trade closely connected with both manufactures and transportation which is coming more and more under the influence of this factor,—namely, the distribution of commodities. Whether the distribution of commodities is affected in an important degree by this principle depends chiefly on the technique. It is impossible to consider this subject in detail, but it may be pointed out that it prevails in the most conspicuous degree in those systems of distribution which require elaborate equipments for transportation, storage, and sale. A good illustration is found in the fresh meat trade. A successful business today requires a large equipment of refrigerator cars, icing stations, and local "coolers" for storage. The plant involves a large expense, which can be born economically only by a large volume of sales. An even better illustration, perhaps, is found in the sale of illuminating oil. The elaborate mechanical

equipment used in the bulk distribution of this commodity, which includes storage tanks, tank cars, tank ships, tank wagons, and in some cases even pipe lines for refined oil, necessarily involves an enormous capital expense, which is made economical only with a very large volume of business. The cost of distribution per gallon diminishes rapidly with the increase in the volume of sales. These like other elaborate methods of distribution are generally calculated to serve more than one end, and to render more than one advantage. As means of obtaining a sure market for a commodity, as well as means for wresting away the business of rivals, they have important uses. The important fact for the present discussion, however, is that the distribution of commodities, like the manufacture of them, is often subject to diminishing cost with increased volume of business. This naturally tends to develop excessive competition, which may become destructive of all but the most powerful, if the competitors do not come to some agreement. In other words, the conditions are present for a natural monopoly.

It is a much simpler matter to state the causes of combination and monopolies than to discover the remedies for them, or for their particular abuses or defects.

Combinations and monopolies may be regarded, on the one hand, as things wholly bad, or on the other hand, as social phenomena producing effects in which good and evil are mixed. If the first view is adopted, we should seek to abolish combinations, either by direct prohibition, or by taking preventive measures looking to the removal of all the causes. If the second view is taken, we must first determine what are the evil results of combinations, and then consider what methods are best adapted to cure them—whether by removing the causes, or by applying

some antidote to the abuse. While there is a good deal of difference of opinion among well informed and disinterested people as to whether combinations are wholly bad or only bad in so far as they produce certain effects, there is naturally a general agreement in the opinions as to the bad effects. The principal evils or abuses, attributed to combinations, appear to be as follows:

1. The exaction of exorbitant prices from consumers.
2. The depressing of the prices of raw material, or the wages of labor.
3. Rebates.
4. Unfair competition.
5. Improper and fraudulent practices in the financial conduct of corporations.
6. Engrossing the natural resources of the country, or patented inventions, and making the control of them the basis for killing off competition, or for an extortionate price policy towards consumers.
7. Dumping, or selling commodities in export markets at lower prices than at home.

Formerly a good deal used to be said of the wastes which combinations and monopolies were guilty of, but less is heard today on this matter. This waste used to be attributed to the lack of competitive stimulus and the discouragement of small individual enterprises. The chief indictment, however, was the destruction or dismantling of plants which were found superfluous by the combination. It is quite evident, of course, that some of the abuses mentioned above, as commonly attributed to combinations and monopolies, exist also under conditions of active competition. Price cutting, railroad rebates, watered stock and dumping, for example, are phenomena quite as characteristic of the competitive régime as of the monopolistic, although such abuses

acquire a much graver import in the latter case. Exorbitant prices, on the other hand, may be regarded, in tendency, at least, as characteristic of the latter. Although selling prices are often higher at times under the competitive system, the tendency is for the prices under a combination or monopoly to exceed them on the average. The abuses of unfair competition, also, though frequently existing to some extent under free competition, are not generally of a very harmful character unless practiced by a concern with monopolistic powers. So, also, the engrossing of natural resources may be carried to a considerable degree by competing concerns, but this becomes of much more serious consequence when a combination or monopoly arises. When the process of absorbing natural resources has been carried very far, this is apt to be the result.

The first remedy that is ordinarily suggested for almost any kind of social abuse is a legal prohibition. If this plan is adopted two difficult questions must be answered: first, What is the exact offence that the law is to prohibit? second, Is a general prohibition of all kinds of combination and monopoly capable of enforcement under the given conditions of public sentiment and business practice?

As to this last question, it must be considered that the business world generally regards great combinations, whether rightly or wrongly, as the natural and necessary development of trade, and declares in picturesque metaphor that "natural laws cannot be repealed by statute." A statute law, of course, is just as much a condition of economic development as any other circumstance—it may be an important or an unimportant one depending on a good many circumstances, but particularly, in countries with popular government, on the degree to which it com-

mands the support of public opinion. It is at least doubtful whether the drastic application of some of the penalties of our state anti-trust laws would be supported by public opinion.

There also appears to be a real difficulty in fixing the definition of the offence committed by establishing a combination or monopoly which will be satisfactory to the practical economist and the jurist. This has been found in Europe, where the legal conditions are much simpler than in the United States. Our difficulties are twofold, depending not only on the nature of the act, but also on our form of government. The people of the United States are in a peculiarly unfortunate position in attempting to regulate these matters, on account of the constitutional limitations of both state and federal governments. The constitutional limitation on the federal government in regard to commerce is an unfortunate historical survival. While under the constitution the power of the federal government to regulate corporations is often spoken of as being limited to those doing an interstate business (and this is the purview of the Sherman Anti-Trust Law), yet as a matter of fact the power of Congress extends to various other subject-matters which would give it additional powers of control; for example, patents, post roads, etc. What is really needed is a revision of the constitution—a revision upward—whereby the organic law of the state, in this as in other respects, shall be made to meet the demands of modern industrial civilization by providing for the enactment of a general code of commercial and corporation law. This, it must be admitted, is at present a counsel of perfection..

The problem of defining the offence of combination or monopoly must be left to the lawyer, if a general prohibition is to be the remedy. Modifications of the Sher-

man Act have been proposed in some quarters, looking to the legalization of reasonable agreements. As is well known the Supreme Court in the Trans-Missouri Freight Association case held that all agreements to fix railroad rates, whether the rates so fixed were reasonable or not, were in restraint of trade and prohibited.

Whatever may be thought of the plan for relaxing the severity of our federal anti-trust law, mentioned above, the history of the development of combinations and monopolies in the United States seems to indicate that a completely satisfactory remedy is not found in criminal prohibition. Until some better device is found, however, for checking combinations which are clearly obnoxious to the public welfare, it is probably better to have an imperfectly designed and sporadically applied prohibition than to have no defense at all. Furthermore, the general position may be taken, that, while great combinations may afford important advantages in developing and exploiting natural resources, or in organizing and cheapening the manufacture and distribution of commodities, and while in particular, they may give to this country a stronger position in international competition than it would otherwise possess, yet none of these considerations is of great weight in comparison with the necessity of preventing one class of the community from unfairly oppressing another, and of compelling all persons and corporations to be obedient to just laws.

A powerful and untrammelled government could easily abolish combinations or monopolies by a variety of measures without resorting to the criminal law, but it would be important to consider whether the remedy adopted might not be worse than the disease.. Remedies for combinations and monopolies should be applied with proper regard to the abuses and to the causes. Apart from

the questionable expedient of a simple prohibition, there is no panacea.

Consideration may now be given to particular remedies.

1. Where a monopoly is the result of a legal grant, it could in general be abolished by simply repealing the grant (subject, of course, to any constitutional limitations); or, in any case, a recurrence thereof could be prevented by refraining from making such grants, or making them only under restrictions that would prevent any objectionable results. In the case of public franchises, it is already customary to limit the term of the privilege, and to exact guarantees for the just treatment of the public. A good illustration is found in the system sometimes used in fixing the price of gas, whereby the increase of dividends is dependent on reductions in price. An easily cured defect of the patent law of this country appears to be the right of the holder to prevent the use of the article absolutely. This right has been abused, especially by concerns seeking to establish monopolies. In this connection the possibility of controlling combinations through patent rights may be noted; for example, Congress might restrict the use, purchase, or sale of a patent by a combination or monopoly.

2. The cause for a very important class of monopolies is found in the exclusive possession or control of natural resources, of which water rights and mineral deposits are perhaps the most important examples. The most effective way to prevent monopolies from being established in this way is obviously to prevent such property rights from being acquired, at least permanently, by any private person or company. Where the community has the original title, mere business interest would suggest that grants of such rights without restrictions, or in perpetuity, were wasteful and improvident. In any case, in order to pre-

vent possible monopoly and exploitation of the public the state or federal government should retain or acquire such rights for themselves, to a certain extent, and eventually allow them to be operated by private interests under definite restrictions concerning the methods of operation and the conduct of the business, and, in some cases, by prescribing rates or prices. This is being done already in some western states with regard to water rights, but the principle is applicable to various natural resources. The constitutional limitations of the federal government are more serious here than in any other case, and this is particularly regrettable, because individual states can hardly be expected to adopt the policy most conducive to the welfare of the whole country in instances where their particular interests are not identical with it. Pennsylvania, for example, would make very little effort to prevent monopoly prices in anthracite coal, the bulk of which is sold outside of the state. In cases where such a policy was deemed impracticable it might be worth while to try the remedy, already applied in some German cities, and recently adopted in the English Budget, namely, to levy a tax on the unearned increment in value from such natural resources. Or, the state might, by eminent domain, take the reversion of such property after a fixed term, say thirty years, paying down now the present value of the reversion.

3. Undoubtedly the most prolific, and at the same time the most demoralizing, cause of monopoly in the United States has been favoritism—particularly in the railroad rebate or special rate. It is important to note that rebates are, to a very large extent, the result of excessive competition, and that with the permission of railroad pooling the chief incentive to this practice would be eradicated. Economists have long admitted that this is

desirable in conjunction with rate regulation, though they have been unwilling, generally, to advocate permitting it in other branches of business, partly because they did not always see that the causes tending to combination were similar in character, but chiefly because they did not think there was any feasible system of preventing abuse of such a privilege. The rebate is, of course, merely one of numerous devices intended to give one shipper an advantage over another. This is one of the causes which should be attacked in the first instance by prohibitory legislation and drastic penalties. In order to make such legislation effective the most thorough administrative supervision is necessary, including the power to examine books and papers, both of transportation companies and shippers.

4. Unfair competition may be the cause for the formation of a monopoly, as well as the means of maintaining it. This term is an elastic one, and includes a variety of practices, which may occur under a competitive, as well as a monopolistic, system. Here again criminal legislation would do much to end the abuses. A prohibition of local price cutting, and of bogus independent companies, seems feasible from the legal standpoint. The practicability of a law against local price cutting is illustrated by the actual Kansas law with respect to the sale of petroleum, and the legal propriety of a law of this kind has been vouched for by no less an authority than the present Secretary of State. Just what form a law against local price cutting should take cannot be adequately considered here; it might be desirable to limit it to cases where prices were cut below cost, or to cases where the prices were cut with the intention to injure a competitor. In this case, of course, some rule of evidence should be established which would make the law effective. In all cases due allowance

should be made for differences in cost of transportation, or for differences in manufacturing cost at different points of supply. The chief difficulty with such a law is in applying it to other commodities than staples of commerce, *i.e.*, to articles for which the measures of quantity and quality are not easily fixed. For this reason it could be successfully applied, perhaps, only to a limited number of specific commodities.

Excluding competitors from obtaining materials, facilities, etc., would need more particular analysis and definition than can be given the subject here. One competitor, for example, may be such an important purchaser, or otherwise so influential, that on his demand the seller may refuse to sell to anyone else. In some lines of business, chiefly, if not invariably, where some element of privilege enters, an obligation exists to supply all would-be customers. Illustrations are found in common carriers, warehousemen, innkeepers, companies supplying water, light, etc. The application of this rule to business generally does not seem advisable, although every case ought to be considered on its merits. The so-called commodity clause in the Hepburn Act, which aimed to prevent railway companies, in certain cases, from producing a commodity which was an important article of freight, and in which commodity they might, directly or indirectly, assure to themselves an unfair advantage over competing producers, is a good example, in purpose at least, of the sort of legislation needed in this direction. While common carriers could of course be prohibited from denying equal facilities, it would be quite another matter to compel combinations which held supplies of natural resources to sell them at reasonable prices. On the other hand, where patented machines or instruments were controlled by a monopoly, it might be required by

law to allow the use of them to all under fair terms. This might involve some control over the system of rental, where that plan is used. The refusal to rent one machine, for example, unless others are also taken, should be prohibited; otherwise a patent, which contemplated a monopoly in a new invention, might lead to a monopoly in things already in common use.

Certain kinds of exclusive contracts are undoubtedly to be included in the term "unfair competition", and as such should be placed under the ban of the law. This has already been done in some states where certain exclusive contracts are declared to be in restraint of trade. Espionage, by corrupting the agents of carriers, of competitors or public employees, in order to obtain information of a competitor's business, and similar practices, should be prohibited also. Criminal legislation in this respect has been developed much further in Europe than in the United States.

5. Certain monopolies owe their existence, at least in a considerable degree, to superior efficiency. What can be done to prevent such a monopoly? A criminal prohibition against efficiency, or any attempt to hamper it unfairly, is certainly not to be recommended. To let such a monopoly loose on the public, and to trust simply to potential competition to keep it straight, is another answer to the problem, but not a very reassuring one under our present conditions and laws. Such a combination, if extensive enough, could probably by means of local price-cutting, and other means of unfair competition, discourage any would-be competitors, and, with a possession of a confirmed monopoly, turn and exploit the consumer. Where, however, a monopoly rested purely on superior efficiency, without the aid of unfair advantages, or unfair competition, and without the possession of

special franchises, or sole control of natural resources, it might be allowed to continue in its monopolistic course as a public utility, but it should be put under scientific observation as an economic curiosity.

6. A monopoly may be established simply on the basis of an agreement among, or consolidation of, all the producers of, or dealers in, a commodity. Including consolidations within the meaning of the term combination, it appears at once that the question as to a remedy for a monopoly of this kind depends on the question as to the remedy or remedies for the various sorts of combinations.

As combinations are often simply the forerunners of monopolies, their causes are often indirectly the causes of monopolies. On the other hand, the particular conditions that make monopolies possible are often the causes in some degree of combinations. Avoiding all repetitions on this account, the remedies for combinations will now be considered.

1. Of our state corporation laws, which encourage the formation of combinations by permitting unreasonable and often almost fraudulent capitalization, as well as a variety of abuses of promotion and underwriting, little need be said. There is not much difference of opinion as to the desirability and practicability of reform. If laws were passed by the states forbidding excessive capitalization and unreasonable contracts with underwriting syndicates, the incentive to and facilities for organizing trusts would be greatly diminished. Stricter rules about holding corporations and the permissibility of one company holding stock in another would make it possible to prevent many obnoxious combinations. The real remedy in this respect, however, is not to be sought from the state, but from a federal code of corporation law, and a system of federal corporations. Apart from curing the general

abuses of corporation law, already referred to, the federal government could set bounds to the system of promiscuous intercorporate shareholding, and also the absolute consolidation of corporations. In this manner the most important devices for forming a present-day trust would be brought under government control.

2. Some combinations depend on a protective duty. The remedy here is suggested by the cause, but, whether it will be regarded as worse than the evil intended to be corrected, will depend generally on whether the opinion is that of a free trader or protectionist. The protectionist's usual objection is, that the abolition of a protective duty may indeed destroy a trust in some cases, but that it will also destroy the outsiders who are competing with it. The Canadians have tried to solve this difficulty by providing that, when the commodity protected by a duty comes under the control of a combination, the duty on such commodity is revoked. Our most conspicuous and powerful trusts, with the exception of the Sugar Trust, do not depend to any important extent on the tariff. It might be opined in regard to the Sugar Trust that, instead of cutting out a useful article of revenue by abolishing the differential on raw and refined sugar, it would be a good thing to levy an internal excise tax to correspond. While tariff duties might well be abolished on certain commodities which are controlled by monopolies, it would be preferable, as a rule, to have this done by law rather than by administrative action. In any case, only grave injury to the public welfare should be the basis of changing the customs duties, when once they are properly adjusted to the national welfare and national industry.

The bounty system of protection, while it has distinct theoretical advantages in some respects, is not generally

favoured, but it may be noted in this connection that it possesses the peculiar advantage that it may be withdrawn from the offending combination without injury to (indeed to the advantage of) the innocent outsider.

3. Combinations are sometimes called into existence to oppose trades unions. In olden times the English law forbade workingmen to combine in order to obtain better terms of employment. Such an act was termed a conspiracy. Today the laws of the land permit to workingmen an unfettered right of combination, but deny the same to the employers. The remedy for combinations among employers is not to be sought, however, in the prevention of combinations among laborers. The reasons of public policy, which have led to the repeal of laws against workingmen's combinations, are too broad in scope to be affected by their occasional relation to employers' combinations.

4. For combinations established to counteract other combinations, it is evident that a remedy aiming to remove the cause would be found only in a general remedy for combinations, which, in that case, would cure both cause and effect.

5. Combinations may arise from excessive competition. The only way to prevent such excessive competition would appear to be in restricting it by limiting the output or sales of each competitor, by fixing prices, or by some similar device. This, however, is just what combinations themselves aim at. In other words, the only cure for the cause is the thing to be prevented. Hence, combination established by the state is, strictly speaking, not a solution of the problem. Such a plan has already been tried in Austria-Hungary in connection with the sugar industry, and in some other instances.

6. Where a combination is formed simply because

an opportunity presents itself to control output and raise prices without any of the special causes of combinations already enumerated there naturally does not appear to be any single peculiar remedy, because the circumstances which make such a course of action feasible are generally various and complex. It is impossible, practically speaking, to try to discover or anticipate all the conditions or circumstances which may induce combinations. There must be, therefore, a residual class of combinations for which a general remedy is available. One remedy for this kind of combination would be that of the French law, which prohibits such combinations as result in giving to a commodity a price other than that which would result from free competition. As interpreted by the courts, this is a prohibition of such combinations as charge unreasonable prices. A criminal law, however, which has to be applied by tedious judicial processes is not a very satisfactory remedy for such abuses.

In considering the means of doing away with combinations and monopolies by eradicating the causes, we have already had occasion to note various abuses, which are causes as well as effects of such organizations. Particularly, we have considered the problems of unfair competition, promotion abuses, the engrossing of natural resources, and the means of preventing them. These are not really abuses which are peculiar to combinations. The same is true of dumping. The discussion of a remedy for this practice would take us too far, but it might be prohibited like local price discrimination, although the principles at the base of it are not the same. The principal abuse, however, namely, price extortion, is one that has still to be considered. Avoiding the direct regulation of prices, the effort has been made to reach a remedy indirectly by the application of the principle involved in the

prohibition of usury. But, as usury laws are seldom convenient in business affairs, so a similar limitation in respect to the prices of commodities, apart from those furnished by public municipal utilities, common carriers, and analogous enterprises, would not prove very practicable. In both cases, however, greater police power over petty dealings with the poorest classes might be beneficial. The remedy for this abuse is, in a certain sense, an answer to the whole problem, and it must be found in the remedy for those classes of combinations and monopolies which can not be corrected by the application of measures devised to remove the particular causes, or intended to neutralize them.

Our analysis thus far, as just intimated, has resulted in the conclusion that, while a number of the important causes of combination or monopoly may be removed by specific remedies, there is a number of causes for which no such remedy seems to be available. Of these classes of combinations requiring some general remedy, two are of special importance; first, those combinations which are induced by excessive competition, and, second, those which cannot be ascribed to any special cause or set of causes, but result from an opportunity to make an extra profit in that manner. Practically these two classes may not be easily distinguishable, but they are really quite distinct, both in cause and purpose.

The problem is to find a remedy for the necessities of industry, without laying the public open to extortion,—how on the one hand, to allow the producers to combine, when necessary to prevent cut-throat competition, and, on the other hand, to prevent them from exploiting the consumer by charging excessively high prices.

The trusts have grown so large, and have become so accustomed to the exercise of extensive and arbitrary

power, that remedies of publicity and moral suasion, which might have been of considerable effect if applied at the beginning, cannot be wholly relied on. What is necessary is a real and effective control.

The first, obvious idea would be to permit such combinations as were deemed necessary, but to establish some sort of a control over prices. Time does not permit a discussion of the merits or possibilities of this method. While we have already come to accept the power of the government to fix rates for the services of various municipal utilities, and even of the railway, the application of the same system to all lines of monopolistic industry does not seem desirable. The greatest difficulties are not those connected with a good understanding of the market, although the business man is apt to talk of these matters as great mysteries. The great combinations in recent years have prided themselves on keeping their prices unchanged during very great changes in productive activity and in general market conditions, and even when the country was in the throes of a panic. But, while the fixing of reasonable prices for coal, rails, illuminating oil, plug tobacco, or even fresh beef, is probably a much simpler matter than the determination of reasonable railway rates, the need for doing so is not the same. If necessary, the state could at the present day take over the operation of the railroads. For the direction of industry as a whole, however, the state is not ready, and no man can see far enough into the future to be sure that it ever will be.

Another answer to the problem would be for the government to become a partner in the counsels, if not in the business, of the combination. A vote in the board of directors and an insight into the most intimate affairs of the combination would undoubtedly greatly strengthen

the government's control, if the right sort of men could be obtained, but this device seems difficult and dangerous.

Allied to this idea is the proposal that the government should enter certain branches of industry to a limited degree, and, by becoming a factor in the business, exercise a moderating influence. This system prevails to some extent in Germany, particularly in the mining of coal and of potash. It is doubtful whether such a policy is worth while, if the object is merely price regulation. Where the conservation of natural resources is at stake, or the preservation of public security is affected, such action might be recommended.

A better solution would seem to be to permit certain combinations, but to limit profits. This is an old-fashioned remedy which has gone out of favor. One reason for this, undoubtedly, was the fact that adequate methods were not applied for its strict enforcement. A scheme which would appear to be worthy of consideration may be briefly outlined as follows:

Let such combinations as are licensed to do business be taxed at a rapidly progressive rate on their net profits above an exempted minimum—say 10 per cent of the net investment. The tax should be substantial from the beginning, say 10 per cent on the profits exceeding 10 per cent, but not exceeding 11 per cent; 15 per cent on the profits exceeding 11 per cent, but not exceeding 12 per cent, the tax rate increasing thereafter, in like manner, by 5 per cent on every 1 per cent increase in the rate of profit. On this basis the maximum profit retained by the corporation would be about 20 per cent, under which condition the state would get about 10 per cent.

Obviously the chief difficulty would be to determine the net investment. The subject is too large for a proper discussion here. Whether the cost of the property in

question or a physical valuation of it should be taken, or whether *tabula rasa* should be made of past offenses, and present book values used as a starting point, would make little difference in the long run. If proper bookkeeping methods were imposed on all companies, any inequalities in assessment existing at present would be comparatively unimportant quantities twenty years from now. If the companies in question were obliged to come to an understanding with the government on this subject, before doing business under such a license, it seems likely that, even now, a reasonably fair valuation could be agreed upon, without great expense or loss of time.

This plan, on the one hand, would leave to private interests the task of fixing prices, with sufficient incentive to strive for a profit, and, on the other hand, would set a limit to the exploitation of the public. It involves the recognition of combination as lawful in certain cases. This might be made by the grant of federal incorporation, or the issue of a license. Such a license would confer, of course, no monopoly. Probably it would involve to some extent administrative discretion, guided, of course, by established general regulations and laws. For the purpose of carrying out the law, a special organ of administration would be necessary. This organ should have, not only the supervision of the federal law concerning combinations, monopolies, and federal corporations, but also act as a licensing, tax collecting, and publicity office.

The various positive measures for the control of combinations and monopolies, which have been mentioned or discussed, do not exhaust the subject by any means, but indicate in a general way what might be done, if a thorough-going system of control was planned. Resumed in brief they are:

1. Restrictions in the grants and uses of patents and franchises.
2. Conservation and control of natural resources, including taxes on unearned increment.
3. Prevention of discriminations in transportation.
4. Prohibition of unfair methods of competition.
5. Provision for abolition or suspension of customs duties in certain cases, or for the establishment of corresponding excise duties.
6. Establishment of a system of federal corporations, under strict control, both as to management and consolidation.
7. Prohibition of unlicensed agreements or consolidations.
8. Establishment of a system for federal license and taxation of combinations.
9. Establishment of an administrative organ to supervise and enforce the laws, and to act as an agent of publicity.

In conclusion it may be pointed out that, if all these remedies were adopted and put into effect, there would still remain questions of policy in the administration of the laws which would be of vast importance to the welfare of the country. For example, the government would have to take a stand on the broad question as to how far it would permit concentration in industry. The adoption of a very thorough-going system of control does not commit the administration of the law to destructive, iconoclastic methods. It merely insures the supremacy of general welfare over particular private interests. The establishment of powerful concerns, which virtually acquired possession of the whole market, if they owed their position to superior efficiency, without the aid of natural resources or facilities not open to all competitors,

and if they pursued a fair business policy toward all competitors and consumers, would not be necessarily regarded as objectionable.

The general ideas at the basis of this scheme of control may be briefly summarized as follows: first, to remove all the conditions which impede free competition, or facilitate combination or monopoly; second, in those cases where free competition becomes destructive to allow the producers to combine, with safeguards for the public interest. It is not believed that the circumstances under which the licensing of combinations is contemplated would be a great temptation to those who did not really suffer from excessive competition. With a system of federal corporations and federal taxation and supervision of corporations, combinations by consolidation could be made impossible, and secret unlicensed agreements could be made ineffective, as well as dangerous to those who attempted them.